

Clause B19.27.100, ECONOMIC PRICE ADJUSTMENT-MARKET PRICE (PC&S ETHANOL)(DESC APR 2001), is hereby added to the solicitation.

B19.27.100 ECONOMIC PRICE ADJUSTMENT - MARKET PRICE (PC&S ETHANOL) (DESC APR 2001)

(a) **WARRANTIES.** The Contractor warrants that--

- (1) The unit prices set forth in this contract do not include allowances for any portion of the contingency covered by this clause; and
- (2) The prices to be invoiced hereunder for listed items shall be computed in accordance with the provisions of this clause.

(b) **DEFINITIONS.** As used throughout this clause, the term--

- (1) **Award price** means the unit price offered for the item of supply identified by the item number.
- (2) **Base reference price** means the market price (contractor's posted price or supplier's price) to be used in determining an economic price adjustment of the base unit price of an individual product for the market area and time period specified in this clause. The base reference price is shown in Column V of the Table below that is the market price from which economic price adjustments are calculated pursuant to this clause.
- (3) **Adjusting reference price** means the market price in effect on the date of delivery and that will be used to determine the change in market price as defined in Column V of the Table below.
- (4) **Date of delivery** means--
 - (i) **FOR TANKER OR BARGE DELIVERIES.**
 - (A) **F.O.B. ORIGIN.** The date and time vessel commences loading.
 - (B) **F.O.B. DESTINATION.** The date and time vessel commences discharging.
 - (ii) **FOR ALL OTHER TYPES OF DELIVERIES.** The date product is received on a truck-by-truck basis.

(c) **ADJUSTMENTS.** Contractor's price change notification shall be submitted within five (5) calendar days of such change. Any resultant price changes shall be provided via notification through contract modifications and/or postings to the DESC web page under the heading **Doing Business with DESC.**

(1) **CHANGE IN SUPPLIER'S PRICE.** The price change notification shall consist of a copy of the Contractor's supplier's notice or invoice, which clearly shows the supplier's name, the increase/decrease in price or invoice price, the applicable product, and the effective date of the change.

(2) **CHANGE IN CONTRACTOR'S POSTED PRICE.** Written documentation sufficient to justify such change shall include, but not be limited to, the actual supplier-published fuel prices (rack, terminal, truck, etc.) clearly annotated for the fuel type to be procured and the effective date of the price change. In the event the Contracting Officer determines the justification insufficient to warrant such a change, the Contractor will be notified within three working days of DESC's receipt of the price change notification. The Contractor shall continue performance under this contract until the situation is resolved in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause of this contract.

(3) **CALCULATIONS.** The prices payable hereunder shall be determined by adding to the award price the same number of cents, or fraction thereof, that the reference price increases or decreases, per like unit of measure. All arithmetical calculations, including the final adjusted unit price, shall be carried to six decimal places, truncated.

(4) **DECREASES.** If the Contractor fails to notify the Contracting Officer of any decrease in market price within the allotted 5-day period, such decrease shall apply to all deliveries made on or after the effective date of such decrease. However, if any overpayment is made to the Contractor as a result of the Contractor's failure to give timely notice to the Contracting Officer of any decrease in the established price, the Contractor shall be charged interest on such overpayment from the date of the overpayment to the date of reimbursement by the Contractor for the overpayment in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause of this contract.

(5) **INCREASES.** Any increase in unit price as a result of an increase in market price shall apply to all deliveries made on or after the date of receipt by the Contracting Officer of written notification from the Contractor of such increase in accordance with (c) above. However, no notification incorporating an increase in a contract unit price shall be executed pursuant to this clause until the increase has been verified by the Contracting Officer.

(6) **FAILURE TO DELIVER.** Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment, unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the CONTRACT TERMS AND

CONDITIONS - COMMERCIAL ITEMS clause of this contract, or is the result of an allocation made in accordance with the terms of the ALLOCATION clause of this contract, in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(7) **UPWARD CEILING ON ECONOMIC PRICE ADJUSTMENT.** The Contractor agrees that the total increase in any contract unit price shall not exceed 60 percent of the award price in any applicable program year (whether a single year or a multiyear program), except as provided hereafter:

(i) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with an appropriate explanation and documentation as required by the Contracting Officer.

(ii) If an actual increase in the market price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(d) **EXAMINATION OF RECORDS.** The Contractor agrees that the Contracting Officer or designated representatives shall have the right to examine the Contractor's books, records, documents, and other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.

(e) **FINAL INVOICE.** The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.

(f) **TABLE.**

I	II	III	IV	V
		If company - name of product; If publication - heading under which reference price is published <u>and name of product</u>	Location where reference price <u>is applicable</u>	Base reference price as of _____ (base ref. date) (excludes all taxes) _____
<u>Item no.</u>	<u>Name of company/ publication</u>			

The Government contemplates award of a one year Requirements Type Fixed Price with Economic Price Adjustment. Price adjustments will be based on prices effective on the date of delivery using market prices (suppliers price, or contractors posted price).